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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
LARRY RUDIS, )  
 )  
Appellant, )  
 )  
v. )  
 )  
OLYMPIC AIR POLLUTION )  
CONTROL AUTHORITY, )  
 )  
Respondent. )

PCHB No. 1050

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter is an appeal of a \$50.00 civil penalty for an alleged outdoor fire violation of respondent's Section 9.01 of Regulation I. Hearing was held before the Pollution Control Hearings Board, Art Brown, Chairman, Chris Smith, and W. A. Gissberg, convened at Lacey, Washington on October 5, 1976. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing.

Appellant, Larry Rudis, appeared pro se; respondent appeared by and through its attorney, Fred D. Gentry. Olympia court reporter Eugene E. Barker provided reporting services.

1 Witnesses were sworn and testified. Exhibits were admitted. From  
2 testimony heard and exhibits examined, the Pollution Control Hearings  
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
7 a certified copy of its Regulation I containing respondent's regulations  
8 and amendments thereto.

9 II

10 Appellant, Mr. Rudis, is a building contractor who agreed to  
11 demolish ten abandoned houses in the City of Aberdeen, Washington.

12 III

13 Mr. Rudis planned to level the houses and burn the remains. He  
14 does not regularly engage in demolition work, and last did that type  
15 of work some three years before. Mr. Rudis did not know that an OAPCA  
16 permit is required for the outdoor fire he had planned.

17 IV

18 Before igniting the fire, Mr. Rudis asked permission of the Aberdeen  
19 Fire Department. An unknown fire official - described as a captain -  
20 gave oral permission for the fire, specified the site, directed removal  
21 of asphalt shingles, linoleum and wiring before igniting the fire, and  
22 supplied fire hoses for fire control. The fire official said nothing  
23 whatever about an OAPCA permit.

24 V

25 By prior arrangement, a free telephone was installed in the  
26 Aberdeen Fire Department with a direct line to OAPCA headquarters in

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Olympia. This telephone was installed for the express purpose of  
2 providing to the public a "one stop" location at which both Fire  
3 Department and OAPCA burning permits could be obtained. Public notice  
4 of the necessity for an OAPCA permit had previously been published in an  
5 Aberdeen newspaper. The Aberdeen Fire Department knew of the necessity  
6 for an OAPCA permit and knew that the telephone was there when Mr. Rudis  
7 requested permission to start an outdoor fire.

## 8 VI

9 On June 24, 1976, Mr. Rudis ignited the demolition fires in  
10 accordance with the directions given him by the Aberdeen Fire Depart-  
11 ment. An OAPCA inspector observed the fires and issued a Notice of  
12 Violation at the site. The fires were then extinguished by Mr. Rudis.  
13 Soon afterwards another official of the Aberdeen Fire Department -  
14 described as higher ranking than the first - arrived on the scene with  
15 news that an OAPCA permit was required. Within the fire there was  
16 burned a six foot length of rubber or plastic insulated wiring. Mr. Rudis  
17 did not cause or allow the burning of a rubber tire, the remains of  
18 which were found near the fire. That tire had been burned in a prior  
19 fire, caused by another, on the same site. A Notice of Penalty Assess-  
20 ment dated July 7, 1976, was mailed to and received by Mr. Rudis.  
21 That Notice imposed a civil penalty of \$50.00 which is now appealed.

## 22 VII

23 Any Conclusion of Law hereinafter recited which should be deemed  
24 a Finding of Fact is hereby adopted as such.

25  
26  
27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 The Hearings Board has jurisdiction over the subject matter and  
4 parties of this appeal.

5 II

6 Mr. Rudis has allegedly committed two separate violations of  
7 OAPCA's Regulation I. First, Section 9.01(a)(b) which requires an  
8 OAPCA permit for outdoor fires and, second, Section 9.01(g) prohibiting  
9 the burning of certain materials in an open fire.

10 III

11 Mr. Rudis violated Section 9.01(a)(b) by failing to obtain an  
12 OAPCA permit for his outdoor fire. This is not less so because  
13 Mr. Rudis did not know that such a permit is required. Mr. Rudis  
14 violated Section 9.01(g) by burning six feet of rubber or plastic  
15 insulation from a wire, which rubber or plastic is a prohibited material.

16 IV

17 Despite the technical violations, a \$50.00 civil penalty is not  
18 warranted at this time. As to the failure to obtain an OAPCA permit,  
19 Mr. Rudis was misled by the fire official who unexplainably failed  
20 to mention the OAPCA permit or the telephone for obtaining it, when  
21 asked for permission to start an outdoor fire. A cooperative fire  
22 department - OAPCA "one permit" system is required by RCW 70.94.745.  
23 The Pollution Control Hearings Board has established a policy that  
24 the good faith efforts of private citizens to comply with regulatory  
25 provisions cannot be ignored by the regulatory agency involved, and  
26 such effort will be considered by this Hearings Board. Lloyds of

27 FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 Washington, Inc. v. Puget Sound Air Pollution Control Agency, PCHB  
2 Nos. 868 and 869, Verne L. Salsbury v. Southwest Air Pollution Control  
3 Authority, PCHB No. 849, and Vestel Manasco v. Southwest Air Pollution  
4 Control Authority, PCHB No. 850.

5 As to the burning of a six foot length of rubber or plastic  
6 insulation, that violation is a de minimis one.

7 V

8 Any Finding of Fact recited herein which is deemed to be a  
9 Conclusion of Law is adopted herewith as same.

10 ORDER

11 The \$50.00 civil penalty assessed and the Notice of Civil Penalty  
12 Assessment here appealed from is hereby suspended for a period of six  
13 months, provided that appellant does not incur any violations within this  
14 period. If at the end of six months, the appellant has incurred no  
15 further violations, the penalty shall be withdrawn automatically.

16 DONE at Lacey, Washington this 20th day of October, 1976.

17 POLLUTION CONTROL HEARINGS BOARD

18 Art Brown  
19 ART BROWN, Chairman

20 W. A. Gissberg  
21 W. A. GISSBERG, Member

22 Chris Smith  
23 CHRIS SMITH, Member

24  
25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER